

March 18, 2021

Submitted via FOIA Online

Regional Freedom of Information Officer
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Re: Freedom of Information Act Request Concerning the Minimum Level for Group I Polycyclic Aromatic Hydrocarbons in NPDES Permits

To Whom It May Concern:

The Conservation Law Foundation (“CLF”) hereby requests the records described below pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.* CLF requests disclosure of all requested records including any and all nonexempt portions of records that are otherwise determined to be exempt from review under the FOIA pursuant to 5 U.S.C. §552(b). *Wightman v. Bureau of Alcohol, Tobacco & Firearms*, 755 F.2d 979, 983 (1st Cir. 1985).

Definitions

The following definitions apply to the enumerated requests below:

1. “Group I PAH” has the same meaning as used in the Remediation Permit.
2. “Draft Chelsea Creek Permits” means the February 10, 2021 Draft Permits for the (i) Sunoco East Boston Terminal, Permit # MA0004006; (ii) Irving Oil Revere Terminal, Permit # MA0001929; (iii) Chelsea Sandwich LLC, Permit # MA0003280; (iv) Global Companies LLC, Permit # MA0000825; and (v) Gulf Oil Terminal, Permit # MA0001091.
3. “Draft Sprague Permits” means the December 4, 2020 Draft Permits for the (i) Sprague Quincy Terminal, Permit #MA0020869, and (ii) Sprague Twin Rivers Technology Terminal, Permit #MA0028037.
4. “Minimum Level” or “ML” has the same meaning as used in the Remediation Permit, Draft Sprague Permits, Draft Chelsea Creek Permits, or Draft Citgo Permit.
5. “Permits” means the Remediation Permit, Draft Sprague Permits, and Draft Chelsea Creek Permits.

6. “Relevant Period” means January 1, 2015 to the present.
7. “Remediation Permit” means the current EPA Region 1 National Pollutant Discharge Elimination System (NPDES) General Permit for Remediation Activity Discharges.

Requests

CLF requests the following:

1. All documents regarding tests performed by or for EPA Region 1 to determine the Minimum Level for Group I PAHs in NPDES permits during the Relevant Period.
2. All documents on which EPA relied in deciding to set 0.1 ug/L as the Minimum Level for Group I PAHs in NPDES permits, including the Remediation Permit, the Draft Sprague Permits, and the Draft Chelsea Creek Permits, during the Relevant Period.
3. All documents regarding the lowest Minimum Level achievable for any Group I PAH using an EPA-approved test method during the Relevant Period.
4. All documents regarding any differences in the Minimum Levels achievable for different Group I PAHs using EPA-approved test methods during the Relevant Period (e.g., whether the ML for benzo(a)pyrene is different than the ML for benzo(a)anthracene).
5. All documents regarding the current availability of labs that are capable of achieving an ML lower than 0.1 ug/L for any Group I PAH using an EPA-approved test method.
6. Any documents, considered by EPA in setting 0.1 ug/L as the ML in the Permits, regarding the availability of labs that are capable of achieving an ML lower than 0.1 ug/L for any Group I PAH using an EPA-approved test method.

CLF looks forward to a response and determination from your office within twenty working days of receipt of this request consistent with 5 U.S.C. § 552(a)(6) and 40 C.F.R. § 2.104. If this request is denied in whole or in part, CLF is entitled to receive, at a minimum, (1) a detailed index/list of the records withheld, including the name of the record, the subject of the record, the author of the record, and the date of the record; and (2) EPA’s basis for withholding the records. *Church of Scientology Int’l v. U.S. Dep’t of Justice*, 30 F.3d 224, 228 (1st Cir. 1994); *Vaughn v. Rosen*, 484 F.2d 820, 823-28 (D.C. Cir. 1973), *cert. denied* 415 U.S. 977 (1974).

Additionally, because CLF works on behalf of the public interest and this FOIA request is made in furtherance of the public interest, CLF requests a waiver of any and all fees associated with the disclosure of records pursuant to this request. The FOIA and EPA’s regulations provide that records will be furnished at reduced or no charge when disclosure “is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5

U.S.C. §552(a)(4)(A)(iii); 40 C.F.R. §2.107(l). CLF addresses in the following paragraphs the six factors that the FOIA officer will consider in determining whether CLF has met the first (disclosure is in the public interest) and second (not primarily for commercial interest of the requester) fee waiver requirements.

First fee waiver requirement:

i. The subject of the requested records must concern identifiable operations or activities of the Federal government, with a connection that is direct and clear, not remote. 40 C.F.R. §2.107(l)(2)(i)

CLF seeks the information referred to in this request in order to better understand the basis for EPA's decision for setting the minimum level for Group I PAH testing at 0.1 ug/L when the water quality based effluent limit for Group I PAHs is lower. The requested records directly concern the operations and activities of USEPA in its role as the primary enforcer and administrator of the Clean Water Act in Massachusetts, in which role USEPA drafted the applicable NPDES permits.

ii. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. 40 C.F.R. §2.107(l)(2)(ii)

The records requested by CLF will provide CLF, its members, and the general public with an increased understanding of the NPDES permitting operations and activities of USEPA as they relate controlling water pollution from Group I PAHs.. Moreover, CLF specifically intends to publish EPA's response and disseminate the responsive documents to CLF's members and the general public.

iii. The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. 40 C.F.R. §2.107(l)(2)(iii)

The records are requested by CLF on behalf of its approximately 4,000 members and the general public, which constitute a reasonably broad audience of persons. **CLF specifically intends to publish EPA's response and disseminate the responsive documents to CLF's members and the general public.**

iv. The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent. 40 C.F.R. §2.107(l)(2)(iii)

The public's understanding of the basis for EPA's decision for setting the minimum level for Group I PAH testing at 0.1 ug/L, when the water quality based effluent limit for Group I PAHs is lower, will be enhanced to a significant extent by disclosure of the requested records.

Second fee waiver requirement:

i. *The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. 40 C.F.R. §2.107(l)(3)(i)*

CLF is a non-profit environmental organization with no commercial interests whatsoever.

ii. *The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.” 40 C.F.R. §2.107(l)(3)(ii)*

As CLF is a non-profit public interest environmental organization with no commercial interests whatsoever, CLF’s primary (and only) interest in the requested disclosure is non-commercial and entirely in the public interest.

Consistent with the fee waiver provisions of the FOIA statute and EPA regulations, CLF seeks the information referred to in this request in order to better basis for EPA’s decision for setting the minimum level for Group I PAH testing at 0.1 ug/L when the water quality based effluent limit for Group I PAHs is lower. CLF has no commercial interest whatsoever that will be furthered by this disclosure. 40 C.F.R. §2.107(l)(2)-(3). Moreover, CLF intends to publish EPA’s response and make the responsive documents available to CLF’s members and the general public. Consequently, a fee waiver is appropriate under FOIA and EPA regulations.

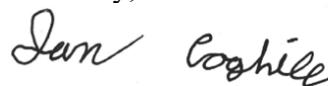
CLF appreciates that this request potentially may involve a large volume of administrative material and is willing to discuss ways to streamline the response.

Please provide the requested documents to:

Grace Li
Paralegal
Conservation Law Foundation
62 Summer Street
Boston, MA 02110
E: gli@clf.org

Please contact me if any further information is necessary at (617) 850-1739 or icoghill@clf.org. Thank you very much for your consideration and prompt response to this request.

Sincerely,



Ian D. Coghill
Staff Attorney